IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24254 of 2004

Between:

The Ex-servicemen Welfare Society, rep by its President R.Rajarao S/o.Late R.Satyam, D.No.13-460/1,Ambedhkar Nagar, Sector II,Arilova,Visakhapatnam Dist.-40.

..... PETITIONER

AND

Visakhapatnam Port Trust, rep by Chairman Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any writ order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent in inviting sealed tenders for providing private security Guards to the respondent and issuing notice dt 6-12-2004 inviting tenders by 27-12-2004 without regularizing our services as pool kalasis or in any other post and retrenching us from our posts in violation of Section 25 F of the Industrial Dispute Act as illegal, arbitrary, Capricious and violative of principles of natural justice and Article 16 and 21 of Constitution of India and consequently to direct the respondent to continue us as Security Guards till we are absorbed as pool kalasis or in any other post and direct the respondent not to receive and open the sealed tenders scheduled on 27-12-2004 or any other subsequent date.

Counsel for the Petitioner: SMT.N.(P).ANJANA DEVI, SATYANARAYANA

Counsel for the Respondent : Mr. N. Subba Reddy and MR.K.SRINIVASAMURTHY

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 24254 of 2004

O R D E R:

The Ex-Servicemen Welfare Society, Visakhapatnam represented by its president filed the present writ petition for grant of writ of Mandamus declaring the action of the respondent in inviting sealed tenders for providing private security guards to the respondent-Port Trust and issuing notice dated 6.12.2004 inviting tenders by 27.12.2004 without regularizing the services of the members of the petitioner society as pool kalasis or in any other post and retrenching them from their posts in violation of Section 25F of the Industrial Disputes Act as illegal and arbitrary.

The case of the petitioner is that the respondent, to provide security arrangement in various areas of port trust, appointed the members of the petitioner-society as security guards from the year 1996. The members of the petitioner-society were taken into service as sponsored by the District Sainik Board by conducting interviews. It is stated that the respondent is an industry and the members of the petitioner-society are its workmen. They are discharging the security guard duties continuously since 1996 though the respondent is showing artificial breaks in the service records to avoid service benefits. There is a direct relationship of employer and employee between the respondent and the security guards. They

have put in more than 240 days of service as security guards. As security guards they have no holidays and they used to work though out the year and therefore they are entitled for regularization of their services as Pool Kalasis as was done for about 16 security guards. The respondent recently called for tenders from the open marked for providing private security for the year 2005 putting the last date for receiving tenders as 27.12.2004. If the contractors are allowed to participate in the tenders and provide their security guards, the members of the petitioner-society will loose their posts which they are doing for the last 8 years and that calling for the tenders is nothing but retrenchment of their services in violation of Section 25F of the I.D. Act. Hence the present writ petition.

The respondent filed counter affidavit stating that the relationship between the parties is contractual in nature and governed by the terms of agreement dated 30.9.2003 which will be in effect up to 31.12.2003 which is for a fixed period and after expiry of the agreement the petitioner has no locus standi. The petitioner has got an effective and alternative remedy of approaching the Industrial Tribunal for redressal. The claim of the petitioner that the services of the members of the petitioner-society would be regularized and that they are in continuous service with the respondent as they have put in service for more than 245 days continuously is denied. It is false to suggest that the members of the petitioner-society are in continuous service of the respondent for more than 245 days. It is clear from the record that they are employees only for a couple of days with individual members. These are all questions fact and the same have to be adjudicated by a competent industrial court. There is no relationship of master and servant and question of paying any

retrenchment compensation does not arise. The tenders were opened on 27.12.2004 as scheduled and they are providing security arrangements at various locations of the port trust for the year 2005 and the same has been awarded to Safety Manpower & Security Services, Visakhapatnam being the lowest bidder. Hence the respondent prays to dismiss the writ petition.

The petitioner-society filed a reply affidavit denying the fact that relationship is governed by the agreement dated 30.9.2003. It is further stated that the respondent has not considered the long service of the members of the petitioner-society. Hence the petitioner prays to allow the writ petition.

Learned counsel for the petitioner Smt. P. Anjana Devi contended that the members of the petitioner-society have been working for more than 240 days as security guards in all the years right from the year 1996 which is the date of their initial appointment and therefore their services have to be regularized as Pool Kalasis. She further contended that some persons who were taken along with the members of the petitioner-society are regularized as Pool Kalasis and therefore the case of the members of the petitioner-society is on par with the persons who are taken as Pool Kalasis and that the respondent is resorting to unfair labour practice and hence she prays to allow the writ petition.

On the other hand, learned counsel for the respondent Sri N. Subba Reddy contended that whether the members of the petitioner-society worked for more than 240 days, whether there is any master and servant relationship existing between the members of the petitioner-society and the respondent and whether they are

workmen under the respondent are all purely questions of fact which have to be decided by the Industrial Tribunal on adducing evidence and the same cannot be determined in this court and therefore the writ petition is totally devoid of merit and liable to be dismissed.

The petitioner-society is registered under the Cooperative Societies Act. The members of the petitioner-society were called for interview in the year 1996 as sponsored by the District Sainik Board for the post of security guards on contract basis. In pursuance of the interview they were selected as security guards on a consolidated monthly amount. The contract is being extended from time to time. Therefore, prima facie the members of the petitioner-society are bound by the terms and conditions of the agreement. As per the agreement, the contractor has to arrange the security guards till 31.12.2004. Initially the members of the petitioner-society were called for the interview as sponsored by the District Sainik Board and underwent the selection process and the selection committee selected the members of the petitioner-society to work as security guards on consolidated amount. Thereafter the members of the petitioner-society were being appointed through petitioner-society who entered into an agreement with the respondent. The contention of the respondent is that the relationship between the parties is contractual in nature and governed by the terms of the agreement dated 30.9.2003 and the members of the petitioner-society are not in continuous service for more than 240 days. There is no master and servant relationship between the members of the petitioner-society and the respondent. There are 11 members in the petitioner-society. The purpose of appointing the security guards by the respondent is

to have security and watch keeping duties. Whether the relationship of master and servant exists between the members of the petitioner-society and the respondent, the nature of business for the said purpose, who is the appointing authority, who is the pay master who can dismiss, how long the service lasts, the extent of control and supervision, nature of the job, nature of the establishment etc. are required to be gone into. There cannot be any dispute that where a person sets up a plea of existence of relationship of employer and employee, the burden would be on him to prove the same and such aspect is a question of fact as held by the Supreme Court in **Workmen of Nilgiri v. State of Tamil Nadu** wherein it is held that the question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising the power of its judicial review shall not interfere with unless the finding is manifestly or obviously erroneous or perverse.

Whether the members of the petitioner-society worked for more than 240 days, whether any master and servant relationship exists in between the members of the petitioner-society and the respondent, whether the appointment of the members of the petitioner-society through a contractor is a sham or nominal etc. are required to be enquired into by the Industrial Tribunal basing upon proof. Such disputed questions of fact cannot be determined while exercising the jurisdiction under Article 226 of the Constitution of India. Therefore, I am of the considered opinion that the contentions raised by the petitioner have to resolved and decided by the Tribunal which is constituted under the Industrial Disputes Act.

The writ petition is devoid of merit and it is dismissed.

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K.C. Bhanu, J.

Date: 15—02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Chairman, Visakhapatnam Port Trust, Visakhapatnam.

2. 2 CD copies